1 Rene L. Valladares Federal Public Defender 2 \*C.B. Kirschner 3 4 5 (702) 388-6577 6 CB Kirschner@fd.org 7 \*Attorney for Anthony Meritt Posey 8 9 10 11 Anthony Meritt Posey, 12 Petitioner, 13 v. 14 Dwight Neven, et al., 15 Respondents. 16 17 18 19 20

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Nevada State Bar No. 11479 Assistant Federal Public Defender Pennsylvania State Bar No. 92998 411 E. Bonneville Ave., Ste. 250 Las Vegas, Nevada 89101

## United States District Court DISTRICT OF NEVADA

Case No. 2:15-cv-01482-RFB-GWF

**Unopposed Motion for Extension** of Time to File Response in **Opposition to Motion to Dismiss** 

(Second Request)

Petitioner, Anthony Meritt Posey, by and though counsel, C.B. Kirschner, Assistant Federal Public Defender, moves this Court for an extension of time of sixty (60) days from October 20, 2018, to and including December 19, 2018, to file a Response in Opposition to Respondents' Motion to Dismiss.

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#### POINTS AND AUTHORITIES

- 1. On or about August 14, 2012, Anthony Meritt Posey was sentenced to two, consecutive periods of incarceration of seventy-two (72) to one hundred eighty (180) months. Mr. Posey mailed his pro se Petition for a Writ of Habeas Corpus on July 28, 2015. ECF No. 1. His First Amended Petition was filed on October 10, 2017. ECF No. 18.
- 2. Respondents filed a Motion to Dismiss on August 7, 2018. ECF No. 24. Petitioner's Response in Opposition is currently due October 20, 2018. Mr. Posey now requests an additional sixty (60) days to file his Opposition, until December 19, 2018. This is the second request for an extension of time.
- 3. The additional period of time is necessary in order to effectively represent Mr. Posey. This motion is filed in the interests of justice and not for the purposes of unnecessary delay.
- 4. Counsel has been working diligently on this and numerous other cases, some of which had immovable deadlines. Counsel has recently completed the following filings: September 7, 2018, Answering Brief filed with the Ninth Circuit Court of Appeals in *Hanson v. Baker*, case no. 18-15547; September 25, 2018, Reply Brief filed with the Nevada Supreme Court in *Ennis v. Filson*, case no. 74457; October 11, 2018, Supplemental Reply Brief filed with the Ninth Circuit in *Noguera v. Smith*, case no. 17-16185; October 15, 2018, Reply to Answer filed in *Melendez v. Neven*, case no. 2:16-cv-01003. Counsel was out of the office on September 19, for personal reasons; attended a full-day training on September 20; and attended (as well as presented at) the National Non-Capital Habeas Conference on September 26 to September 28, 2018. Counsel also had a hearing on September 24, 2018, in *Zimmerman v. Baca*, case no. 3:15-cv-00454.
- 5. Counsel has upcoming filing deadlines in ten other pending habeas cases and has an oral argument before the Ninth Circuit on November 16, 2018 in

Noguera v. Smith, case no. 17-16185. Counsel will also be out of town for the Thanksgiving holiday from November 21 to November 27, 2018.

- 6. On October 17, 2018, Deputy Attorney General Erin Bittick was contacted via email and stated she did not object to the extension, but the lack of objection should not be construed as a waiver of any procedural defenses.
- 7. For the above stated reasons, Petitioner respectfully requests this Court grant the request for an extension of time of sixty (60) days and order the Response in Opposition to be filed on or before December 19, 2018.

Dated this 18th day of October, 2018.

Respectfully submitted, Rene L. Valladares Federal Public Defender

/s/ C.B. Kirschner

C.B. Kirschner Assistant Federal Public Defender

IT IS SO ORDERED:

RICHARD F. BOULWARE, II United States District Court DATED: October 19, 2018.

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### CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system and include: Erin Bittick

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing documents by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following non-CM/ECF participants:

Anthony Posey # 1091115 Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89419

/s/ Jessica Pillsbury

An Employee of the Federal Public Defender